



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R06-OAR-2019-0213; FRL-9995-18-Region 6]

Air Plan Approval; Texas; Dallas-Fort Worth Area Redesignation and Maintenance Plan for Revoked Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA or Agency) is proposing to approve a revision to the Texas State Implementation Plan (SIP). The EPA is proposing to determine that the Dallas-Fort Worth (DFW) area is continuing to attain the 1979 1-hour and 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS or standard) and has met the CAA criteria for redesignation. Therefore, the EPA is proposing to terminate all anti-backsliding obligations for the DFW area for the 1-hour and 1997 ozone NAAQS. The EPA is also proposing to approve the plan for maintaining the 1-hour and 1997 ozone NAAQS through 2032 in the DFW area.

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2019-0213, at <https://www.regulations.gov/> or via email to todd.robert@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information

(CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Robert Todd, 214-665-2156, todd.robert@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at the EPA Region 6 Office, 1201 Elm Street, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: Robert Todd, EPA Region 6 Office, Infrastructure & Ozone Section, 1201 Elm Street, Suite 500, Dallas, Texas, 75270, 214-665-2156, todd.robert@epa.gov. To inspect the hard copy materials, please schedule an appointment with Mr. Robert Todd or Mr. Bill Deese at 214-665-7253.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

In 1979, under section 109 of the CAA, the EPA established the primary and secondary NAAQS for ozone at 0.12 parts per million (ppm) averaged over a 1-hour period (44 FR 8202,

February 8, 1979).¹ In 1997, we revised the primary and secondary NAAQS for ozone to set the acceptable level of ozone in the ambient air at 0.08 ppm, averaged over an 8-hour period (62 FR 38856, July 18, 1997).² In 2008, we further revised the primary and secondary ozone NAAQS to 0.075 ppm, averaged over an 8-hour period (73 FR 16436, March 27, 2008).³ For additional information on ozone, please see the Technical Support Document (TSD) in the docket for this action and visit <https://www.epa.gov/ozone-pollution>.

Implementation of the 1-hour and the 1997 8-hour Ozone NAAQS

In 2004, we published a rule governing implementation of the 1997 ozone NAAQS (Phase 1 Rule) (69 FR 23951, April 30, 2004). The Phase 1 Rule revoked the 1-hour ozone NAAQS along with designations and classifications for that standard and set anti-backsliding provisions for the transition from the 1-hour to the 1997 8-hour standard. Anti-backsliding provisions provide for controls that are not less stringent than the controls applicable to areas that were listed as nonattainment for the revoked ozone standards when the standards and designations were revoked.

In 2015, EPA revoked the 1997 ozone NAAQS and established anti-backsliding requirements for the revoked 1997 ozone NAAQS, as well as some revisions to the anti-backsliding requirements for the revoked 1-hour standard, in our final rule for implementing the 2008 ozone NAAQS (known as the “SIP Requirements Rule,” 40 CFR 51.1100, and 80 FR 12264). EPA considered the *South Coast I* decision on the Phase 1 Rule in developing the SIP

¹ Primary standards are set to protect human health while secondary standards are set to protect public welfare. In addition, many reports of ozone concentrations are given in parts per billion (ppb); ppb = ppm x 1000. Thus, 0.12 ppm becomes 120 ppb or 124 ppb when rounding is considered.

² The standard of 0.08 ppm becomes 0.084 ppm or 84 ppb when rounding, based on the truncating conventions in 40 CFR part 50, Appendix P.

³ In 2015, we again revised the primary and secondary ozone NAAQS to 0.070 ppm, averaged over an 8-hour period (73 FR 16436, March 27, 2008). This action does not address the DFW area under the 2008 or 2015 ozone standards.

Requirements Rule for the 2008 8-hour ozone standard. The anti-backsliding requirements for the revoked 1-hour and 1997 ozone NAAQS are listed in 40 CFR 51.1100(o).⁴

The SIP Requirements Rule provided that an area will be subject to the anti-backsliding obligations for a revoked NAAQS until we approve (1) a redesignation to attainment for the area for the 2008 ozone NAAQS or (2) a “redesignation substitute” for a revoked NAAQS, which required an area to demonstrate that it had attained the revoked NAAQS due to permanent and enforceable measures and would maintain that standard for ten years (40 CFR 51.1105(b)(1)). In the SIP Requirements Rule, EPA had created the redesignation substitute procedure because it believed it did not have the authority under the CAA to change the designations of areas under a revoked NAAQS but wanted a means to terminate anti-backsliding requirements for an area that would otherwise be eligible for a redesignation had the standard not been revoked. 80 FR at 12304-05. Though EPA created the redesignation substitute based on the CAA 107(d)(3)(E) redesignation criteria, the procedure did not require states to demonstrate satisfaction of all five criteria. Texas submitted and EPA approved redesignation substitute demonstrations for the DFW area for both the 1-hour ozone NAAQS and the 1997 8-hour ozone NAAQS (81 FR 78688, November 8, 2016), on the basis that the area was attaining both standards based on permanent and enforceable emission reductions and had demonstrated that the area would maintain each standard for 10 years. The effect of the redesignation substitute was to terminate the anti-backsliding obligations for the DFW area to implement Serious nonattainment area requirements for the revoked ozone NAAQS (40 CFR 51.1100(o)).

On February 16, 2018, the D.C. Circuit Court vacated certain parts of the 2015 final rule for implementing the 2008 ozone NAAQS, including the redesignation substitute provision, based

⁴ Applicable requirements for the DFW area for anti-backsliding purposes are listed in our TSD for this proposal.

on the court's conclusion that those provisions were not consistent with CAA requirements.

South Coast Air Quality Management District v. EPA, 882 F.3d 1138 (D.C. Cir. 2018) (“*South Coast II*”). In that decision, the Court held that the redesignation substitute tool was not consistent with CAA requirements because it failed to satisfy all five of the statutory requirements set forth in CAA section 107(d)(3)(E), which governs redesignations from nonattainment to attainment. *Id.* at 1152.

The DFW Area's Designations and Classifications Under the 1-hour Ozone NAAQS and the 1997 8-hour Ozone NAAQS

Under the 1-hour ozone NAAQS, the DFW area, consisting of Collin, Dallas, Denton and Tarrant Counties, was designated as nonattainment and classified as Moderate with an attainment deadline of November 15, 1996. 56 FR 56694, November 6, 1991. On February 18, 1998, we published a finding that the DFW area did not attain the 1-hour ozone standard by its applicable attainment date of November 15, 1996. See 63 FR 8128. As a result of this finding, the DFW ozone nonattainment area was reclassified by operation of law as a Serious ozone nonattainment area for the 1-hour standard on March 20, 1998. 63 FR 8128 (February 18, 1998). This determination of failure to attain by the DFW area's attainment date required the State to submit an attainment demonstration SIP with an attainment date of November 15, 1999, including measures to comply with Federal CAA requirements for Serious ozone nonattainment areas. On October 16, 2008, EPA published a determination of attainment that the DFW 1-hour ozone nonattainment area subsequently attained the 1-hour ozone standard based upon certified ambient air monitoring data. See 73 FR 61357.⁵

⁵ See the TSD to this proposal for a thorough history of actions taken by the State and EPA to bring the area into attainment.

Under the 1997 8-hour ozone NAAQS, the DFW area (consisting of the same four core counties plus the five surrounding counties of Ellis, Johnson, Kaufman, Parker and Rockwall)⁶ was designated as nonattainment and classified as Moderate with an attainment deadline of no later than June 15, 2010 as set forth in the CAA for Moderate nonattainment areas. (69 FR 23858 and 69 FR 23951 April 30, 2004). The DFW area did not attain by the June 15, 2010 deadline and was reclassified as Serious with an attainment deadline of June 15, 2013. (75 FR 79302, December 20, 2010). On September 1, 2015 EPA published a determination of attainment that the DFW 1997 8-hour ozone nonattainment area attained the 1997 8-hour ozone NAAQS based upon complete, quality-assured and certified ambient air monitoring data that show the area has monitored attainment of the 1997 ozone NAAQS for the 2012-2014 monitoring period. (80 FR 52630).

The Texas Redesignation and Maintenance Plan Submittal

On March 27, 2019, the Texas Commission on Environmental Quality (TCEQ or State) adopted the DFW Redesignation Request and Maintenance Plan SIP Revision for the 1-hour and 1997 ozone NAAQS and submitted this package to EPA on March 29, 2019. The SIP revision includes a request that the EPA redesignate the DFW area to attainment for the 1-hour and 1997 ozone NAAQS and provides a maintenance plan that will ensure the area remains in attainment of these NAAQS through 2032. This submittal addresses all five criteria of CAA section 107(d)(3)(E). As stated in their submittal, the TCEQ developed this redesignation request and maintenance plan SIP revision in order to address the uncertainty created by the court's *South Coast II* ruling.

⁶ The nonattainment area for Dallas-Fort Worth was expanded to encompass the original four-county area plus five surrounding counties during the designation phase for the 8-hour ozone NAAQS. See 69 FR 23858, April 30, 2004.

We note that the Agency has previously taken the position that when it revokes a NAAQS in full, all the associated designations and classifications under that NAAQS are also revoked, *see* 69 FR 23951, 23969-70 (April 30, 2004), and the Agency no longer has the authority to change those designations, 80 FR 12296-97, 12304-05 (March 6, 2015). However, in the SIP Requirements Rule, EPA stated that it was retaining the listing of the designated areas in 40 CFR Part 81 under the revoked 1997 NAAQS “for the *sole purpose* of identifying the anti-backsliding requirements that may apply to the areas at the time of revocation.” 80 FR 12296-97 (emphasis added). The *South Coast II* court decision did not address the Agency’s interpretation that it lacks authority to alter an area’s designation post-revocation of a NAAQS. The *South Coast II* court decision did hold that areas that were nonattainment for a revoked standard at the time of revocation could only terminate their obligations under that standard by demonstrating that they have met all five of the statutory redesignation criteria, and thus could not rely on the redesignation substitute mechanism included in the ozone implementation rule at issue. 882 F.3d at 1152 (“The Clean Air Act unambiguously requires nonattainment areas to satisfy all five of the conditions under §7407(d)(3)(E) before they may shed controls associated with their nonattainment designation.”).

While the Court did not address the issue of EPA’s authority to alter designations after a standard has been revoked, it did speak to EPA’s interpretation that we lacked authority to change a nonattainment area’s *classification* under a revoked ozone NAAQS. The Court held that the EPA is required to continue to reclassify to a higher classification, or bump up, areas under the revoked 1997 NAAQS that fail to attain on time, because, in the court’s view, such reclassification is an anti-backsliding control. *South Coast II*, 882 F.3d at 1147-48. The Court’s holding on this point could be interpreted to call into question EPA’s interpretation that when a

NAAQS and its associated designations and classifications are revoked in full, it no longer retains the authority to alter those designations and classifications.

EPA is proposing to find that Texas' submittal meets all five criteria in section 107(d)(3)(E), as required by the court, for the 1-hour and 1997 ozone NAAQS. EPA is therefore proposing to terminate the anti-backsliding obligations for Serious area requirements for the DFW area associated with the 1-hour and the 1997 ozone NAAQS.

We are also taking comment on whether EPA has the authority to alter the area's nonattainment area *designation* post-revocation, if only to fully clarify that such area has satisfied all requirements with respect to that revoked NAAQS. We therefore propose in the alternative that if EPA has such authority, the DFW area be redesignated to attainment for the revoked 1-hour and 1997 ozone NAAQS. However, regardless of whether designations can be altered after revocation, it is clear under *South Coast II* that EPA has the authority to terminate an area's anti-backsliding obligations under a revoked NAAQS for the area's classification if that area meets the section 107(d)(3)(E) criteria.

If finalized, this action will replace our previous approvals of DFW redesignation substitutes for the 1-hour and 1997 8-hour ozone NAAQS. It should be noted that we are not proposing to alter our previous conclusions that the DFW area has attained the 1-hour and 1997 8-hour ozone NAAQS due to permanent and enforceable emission reductions. Along with taking comment on whether EPA can alter an area's nonattainment designation, we are specifically taking comment on whether as part of this action, EPA has the authority to and should revise the listings in Part 81 for the DFW area for the 1-hour and 1997 ozone standards from nonattainment to attainment in recognition that the area meets the 107(d)(3)(E) criteria and it is no longer necessary to identify the area as one where anti-backsliding obligations apply under these standards for the

Serious requirements. This proposed action would have no effect on the DFW area's obligations with respect to the 2008 or 2015 ozone NAAQS. The area still must meet the Moderate nonattainment area requirements for the 2008 ozone standard and implement controls that are in the EPA approved SIP, and we note that we have proposed to reclassify the DFW area to Serious for the 2008 ozone standard. See 83 FR 56781 (November 14, 2018). On June 4, 2018, the DFW area was designated as Marginal nonattainment for the 2015 ozone NAAQS (83 FR 25776).

II. Redesignation Criteria for Ozone Nonattainment Areas

As explained earlier in this action, we are proposing to terminate the Serious area classification's anti-backsliding obligations for the revoked standards or redesignate the area to attainment for the revoked standards, which would also have the effect of terminating the Serious area classification's anti-backsliding obligations, based on our conclusion that the five criteria in CAA section 107(d)(3)(E) are met. The CAA requires the following criteria: (1) we determine that the area has attained the NAAQS; (2) we have fully approved the applicable implementation plan for the area under CAA section 110(k); (3) we determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and Federal air pollutant control regulations and other permanent and enforceable reductions; (4) we have fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and (5) we determine the State containing such area has met all requirements applicable to the area under CAA section 110 (Implementation plans) and part D (Plan Requirements for Nonattainment Areas).

Since Congress passed the CAA Amendments in 1990, EPA has consistently held the position that not every requirement that an area is subject to is applicable for purposes of redesignation. *See, e.g.*, September 4, 1992, Memorandum from John Calcagni ("Calcagni

Memo”) at 6.⁷ For example, some of the Part D requirements, such as demonstrations of reasonable further progress, are designed to ensure that nonattainment areas continue to make progress toward attainment. EPA has interpreted these requirements as not “applicable” for purposes of redesignation under CAA section 107(d)(3)(E)(ii) and (v) because areas that are applying for redesignation to attainment are by definition already attaining the standard. *Id.* Similarly, EPA has long held that only those CAA provisions that are relevant to an area’s designation and classification as a nonattainment area are “applicable” for purposes of redesignation under CAA section 107(d)(3)(E)(ii) and (v). For this reason, SIP revisions that apply regardless of whether an area is designated nonattainment or attainment, such as good neighbor plans required under CAA section 110(a)(2)(D)(i)(I), have not been considered “applicable” for purposes of redesignation. Finally, some requirements may not be applicable in this action given that both the 1-hour and 1997 8-hour NAAQS at issue in this notice were revoked for all purposes, and, post-revocation, the DFW area remained subject only to the anti-backsliding requirements identified by EPA in regulation. *See* 40 CFR 51.1105(a); 51.1100(o).

EPA’s Evaluation of the Redesignation and Maintenance Plan Submittal

Below is the summary of our evaluation. Detailed information on our evaluation can be found in the TSD. EPA normally evaluates these criteria as the basis to redesignate an area to attainment, therefore, EPA has here conducted this analysis for purposes of terminating the 1-hour and 1997 ozone NAAQS anti-backsliding requirements or in the alternative, for redesignation.

⁷ “Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992. To view the memo, please visit https://www.epa.gov/sites/production/files/2016-03/documents/calcagni_memo_-_procedures_for_processing_requests_to_redesignate_areas_to_attainment_090492.pdf

Has the Area Attained the 1-hour and 1997 8-hour ozone NAAQS and Are the Improvements in Air Quality Due to Permanent and Enforceable Reductions in Emissions? (Criteria 1 and 3)

In prior actions we determined that the DFW area attained the 1-hour ozone NAAQS (73 FR 61357, October 16, 2008) and 1997 8-hour ozone NAAQS (80 FR 52630, September 1, 2015). Quality-assured ambient air quality data found in the Air Quality System (AQS) database shows that the DFW area attained the 1-hour ozone NAAQS in 2006 and attained the 1997 ozone NAAQS in 2014 (Table 1).⁸ We are proposing to determine that the DFW area is attaining the 1-hour and 1997 8-hour ozone NAAQS.

Table 1. 1-Hour and 1997 Ozone Design Values for the DFW area

Years	1-hour ozone design value	1997 ozone design value
2011-2013	108 ppb	87 ppb
2012-2014	102 ppb	81 ppb
2013-2015	102 ppb	83 ppb
2014-2016	101 ppb	80 ppb
2015-2017	101 ppb	79 ppb
2016-2018	101 ppb	76 ppb

In a prior action we determined that the improvement in air quality in the DFW area is due to permanent and enforceable reductions in emissions (81 FR 78688, November 8, 2016). Texas identified State and Federal control measures that led to permanent and enforceable emission reductions. (See the TSD for this proposal for a thorough listing of the identified emission reductions.) Additionally, we have approved Reasonable Further Progress SIPs for the DFW area that document continuous emissions reductions due to permanent and enforceable measures for

⁸ For more information on AQS, please visit <https://www.epa.gov/aqs>. Tables listing the DFW monitoring sites with the fourth high 8-hour ozone average concentrations and design values and expected exceedances of the 1-hour ozone NAAQS are provided in the TSD for this rulemaking.

the 1-hour and 1997 8-hour ozone standards (70 FR 15592, March 28, 2005, 73 FR 58475, October 7, 2008, and 79 FR 67068, November 12, 2014). We propose that the DFW area has attained the 1-hour and 1997 ozone NAAQS due to permanent and enforceable emission reductions.

Is the Applicable Implementation Plan for the Area Fully Approved and Has the Area Met All Applicable Requirements Under CAA Section 110 and Part D? (Criteria 2 and 5)

We are proposing to find that the DFW area has met all requirements under CAA section 110 (Implementation Plans and part D (Plan Requirements for Nonattainment Areas) that are applicable for purposes of redesignation (CAA section 107(d)(3)(E)(v)), and that those requirements have been fully approved into the Texas SIP (CAA section 107(d)(3)(E)(ii)).

110(a)(2) of the CAA contains the general requirements for a SIP. Section 110(a)(2) provides that the SIP must have been adopted by the state after reasonable public notice and hearing, and that, among other things, it must: (1) Include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; (2) provide for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; (3) provide for implementation of a source permit program to regulate the modification and construction of stationary sources within the areas covered by the plan; (4) include provisions for the implementation of part C prevention of significant deterioration (PSD) and part D new source review (NSR) permit programs; (5) include provisions for stationary source emission control measures, monitoring, and reporting; (6) include provisions for air quality modeling; and, (7) provide for public planning and emission control rule development.

Part D of the CAA establishes the plan requirements for nonattainment areas. Section 172(c) in subpart 1 of part D sets forth the basic requirements of air quality plans for states with nonattainment areas that are required to submit plans on a schedule pursuant to CAA section 172(b). Subpart 2 of part D, which includes section 182 of the CAA, establishes specific requirements for ozone nonattainment areas depending on the areas' nonattainment classifications. The DFW area was classified as Serious under the 1-hour ozone NAAQS for the original four-county nonattainment area and Serious under the 1997 ozone NAAQS for the expanded nine-county nonattainment area. As such, the area is subject to the subpart 1 requirements contained in CAA sections 172(c) and 176, as well as the specific subpart 2 requirements of CAA section 182(c). A thorough discussion of the requirements contained in CAA sections 172(c) and 182(c) can be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

As discussed previously, EPA has consistently held the position that not every requirement that an area is subject to is applicable for purposes of redesignation. However, for the revoked ozone standards at issue here, over the past three decades the State has submitted numerous SIPs for the DFW area in order to implement those standards, improve air quality with respect to those standards, and to address anti-backsliding requirements for those standards. Therefore, even though some of the DFW area's SIP-approved measures address requirements that are not "applicable" for purposes of redesignation under CAA section 107(d)(3)(E)(ii) and (v), such as CAA section 182(b) reasonable further progress, or address requirements that were not retained for anti-backsliding, such as section 182(a) emissions inventories, we provide in the accompanying TSD the list of SIP-approved measures the State has adopted and EPA has approved for the DFW area with respect to the revoked 1-hour and 1997 8-hour ozone NAAQS.

These include: (1) emissions inventories, (2) emissions statements, (3) nonattainment new source review programs, (4) reasonably available control technology for sources of both VOC and NO_x, (5) both basic and enhanced vehicle inspection and maintenance programs, (6) enhanced ambient monitoring, (7) attainment and reasonable further progress demonstrations, (8) contingency measures for failure to attain or make reasonable further progress, and (9) clean fuel vehicle programs.⁹ Texas also submitted SIPs to address CAA section 110(a)(2) for the 1997 ozone NAAQS, which we approved in prior actions.¹⁰

Does Texas have a Fully Approved Ozone Maintenance Plan for the DFW Area? (Criterion 4)

Section 107(d)(3)(E)(iv) of the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to CAA section 175A. Under CAA section 175A, the maintenance plan must demonstrate continued attainment of the NAAQS for at least 10 years. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, as EPA deems necessary, to assure prompt correction of any future NAAQS violation.

EPA's interpretation of the elements under CAA section 175A is contained in the Calcagni Memo. Section 107(d)(3)(E)(iv) requires the maintenance plan to be "fully approved," and the Calcagni Memo provides that a state may submit the redesignation request and maintenance plan at the same time and rulemaking on both may proceed on a parallel track. The Calcagni Memo further provides guidance on the content of a maintenance plan, explaining that it should address five requirements: (1) An attainment emissions inventory; (2) a maintenance demonstration; (3)

⁹ The requirements can be found in CAA sections 182(a) through 182(c).

¹⁰ Approval of the section 110(a)(2) Infrastructure SIP for the 1997 ozone standard for Texas is not required for purposes of redesignation.

an air quality monitoring commitment; (4) verification of continued attainment; and (5) a contingency plan.

In conjunction with the redesignation request submitted to EPA on April 4, 2019, TCEQ submitted a maintenance plan to provide for the ongoing attainment of the 1-hour and 1997 8-hour ozone NAAQS for at least ten years following the effective date of approval of the SIP revision. Our evaluation of the five requirements follows:

1. Attainment Inventory

The Texas submittal includes a 2014 base year emission inventory (EI) for NO_x and VOC. The TCEQ chose 2014 as it is one of the three years used to determine the design value for the 2014 attainment year (the year the area attained both the 1-hour and 1997 ozone NAAQS), consistent with the attainment inventory criteria in the Calcagni Memo. We propose to approve the 2014 base year EI.

2. Maintenance Demonstration

Texas has demonstrated maintenance of the 1-hour and 1997 ozone NAAQS through 2032 by providing EI projections from 2014 through 2032 that show emissions of NO_x and VOC for the DFW area remain at or below the attainment year (2014) emission levels. A maintenance demonstration need not be based on modeling.¹¹ The future year Texas EIs presented are 2020, 2026, and 2032: 2032 is more than 10 years after the expected effective date of this action and 2020 and 2026 show emissions between the attainment year and final maintenance year. To generate the future year EIs, Texas estimated the amount of growth that will occur between 2014 and the end of 2020, 2026, and 2032. Generally, the State followed our guidelines in estimating

¹¹ See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25413, 25430–25432 (May 12, 2003).

the growth in emissions. Tables 2 through 7 show the 2014 base year EI and the projected emissions for the years 2020, 2026 and 2032 in tons per day (tpd).

Table 2. Change in NOx emissions from 2014 through 2032 for the four-county one-hour Ozone DFW Nonattainment Area (tpd)

Source Category	Year			
	2014	2020	2026	2032
Point	6.29	6.98	6.98	6.98
Area	32.05	31.67	31.81	32.65
On-road	148.44	70.06	44.51	32.17
Non-road	70.98	53.19	45.62	43.61
<i>Annual Totals:</i>	<i>257.76</i>	<i>161.90</i>	<i>128.92</i>	<i>115.41</i>

Table 3. Change in NOx emissions from 2014 through 2032 for the nine-county 1997 8-hour Ozone DFW Nonattainment Area (tpd)

Source Category	Year			
	2014	2020	2026	2032
Point	27.05	34.82	34.82	34.82
Area	37.43	36.44	36.14	37.07
On-road	184.33	89.68	57.97	42.94
Non-road	84.58	61.84	51.99	48.89
<i>Annual Totals:</i>	<i>333.39</i>	<i>222.78</i>	<i>180.92</i>	<i>163.72</i>

Table 4. Change in VOC emissions from 2014 through 2032 for the four-county one-hour Ozone DFW Nonattainment DFW Area (tpd)

Source Category	Year			
	2014	2020	2026	2032
Point	12.21	12.21	12.21	12.21
Area	223.36	243.11	245.12	263.69
On-road	69.69	44.66	34.81	25.46
Non-road	35.60	30.24	30.50	32.21
<i>Annual Totals:</i>	<i>340.86</i>	<i>330.22</i>	<i>322.64</i>	<i>333.57</i>

Table 5. Change in VOC emissions from 2014 through 2032 for the nine-county 1997 8-hour Ozone DFW Nonattainment Area (tpd)

Source Category	Year			
	2014	2020	2026	2032
Point	22.12	22.12	22.12	22.12
Area	268.71	289.00	283.06	303.71
On-road	80.47	51.62	40.17	29.51
Non-road	40.31	33.85	33.87	35.61
<i>Annual Totals:</i>	<i>411.61</i>	<i>396.59</i>	<i>379.22</i>	<i>390.95</i>

We note that the projections for the on-road mobile source inventory for 2032, which TCEQ submitted as motor vehicle emissions budgets, are consistent with maintenance of the 1-hour and 1997 NAAQS.

Table 6. Maintenance Demonstration for the four-county DFW 1-hour Ozone NAAQS area¹²

Description	NOx (tpd)	VOC (tpd)
a. 2014 Emissions Inventories (from Tables 2 and 4)	257.76	340.86
b. 2032 Emissions Inventories (from Tables 2 and 4)	115.41	333.57
c. Change in EI from 2014 to 2032 (line b minus line a)	- 142.35	- 7.29
d. Percent change in EI from 2014 to 2032	- 55.23%	- 2.14%

Table 7. Maintenance Demonstration for the nine-county DFW 1997 Ozone NAAQS area

Description	NOx (tpd)	VOC (tpd)
a. 2014 Emissions Inventories (from Tables 3 and 5)	333.39	411.61
b. 2032 Emissions Inventories (from Tables 3 and 5)	163.72	390.95
c. Change in EI from 2014 to 2032 (line b minus line a)	- 169.67	- 20.66
d. Percent change in EI from 2014 to 2032	- 50.89%	- 5.02%

For the four-county DFW 1-hour ozone NAAQS area, NOx emissions are projected to decrease by approximately 142 tpd by 2032, which is about 55 percent less than the 2014 NOx emission levels. Also, VOC emissions are projected to decrease by approximately 7 tpd by 2032, which is about 2 percent lower than the 2014 VOC emission levels for the same area. For the nine-county DFW 1997 ozone NAAQS area emissions of NOx are projected to decrease by approximately 170 tpd by 2032, which is about 51 percent less than the 2014 NOx emission levels. VOC emissions for the nine-county area are projected to decrease by 21 tpd, which is about a 5 percent decrease between 2032 and 2014. Because the projected emissions of NOx and

¹² See our TSD for more detail on the State's submitted maintenance demonstration.

VOC will decrease between 2032 and 2014, we propose that the TCEQ has demonstrated maintenance of the 1-hour and 1997 ozone NAAQS through 2032.

3. Monitoring Network

The TCEQ has committed to continue to maintain an air monitoring network to meet regulatory requirements in the DFW area to ensure maintenance of the 1-hour and 1997 ozone standards. Texas has committed to meet monitoring requirements and continue to quality assure monitoring data in accordance with 40 CFR part 58, and to enter all data into AQS in accordance with Federal guidelines through the end of the maintenance period in 2032.

4. Verification of Continued Attainment

The TCEQ has the legal authority to enforce and implement the requirements of the maintenance plan for the DFW area. This includes the authority to adopt, implement, and enforce any subsequent emission control measures determined as necessary to correct any future failure to maintain the 1-hour and 1997 ozone NAAQS.

Verification of continued attainment is accomplished through operation of the ambient ozone monitoring network and the periodic update of the area's EI. The TCEQ has committed to continue monitoring ozone levels according to an EPA-approved monitoring plan. Should changes in the location of an ozone monitor become necessary, TCEQ will work with EPA to ensure the adequacy of the monitoring network. The TCEQ has further committed to continue to quality assure the monitoring data to meet the requirements of 40 CFR part 58 and enter all data into AQS in accordance with Federal guidelines.

In addition, to track future levels of emissions, TCEQ will continue to develop and submit to EPA updated EIs for all source categories at least once every three years, consistent with the requirements of 40 CFR part 51, subpart A, and in 40 CFR 51.122. The most recent triennial

inventory for Texas was compiled for 2014. Point source facilities covered by the Texas emission statement rule will continue to submit VOC and NO_x emissions on an annual basis as required by 30 TAC Chapter 101.10(d).

5. Contingency Plan

Section 175A of the CAA requires that the state must adopt a maintenance plan, as a SIP revision, that includes such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation of the area to attainment of the NAAQS. The maintenance plan must identify: The contingency measures to be considered and, if needed for maintenance, adopted and implemented; a schedule and procedure for adoption and implementation; and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be considered, adopted, and implemented. The maintenance plan must include a commitment that the state will implement all measures with respect to the control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d) of the CAA.

As required by CAA section 175A, Texas has proposed a contingency plan for the DFW area to address future violations of the 1-hour and/or 1997 ozone NAAQS. The contingency measures proposed by the TCEQ include, but are not limited to, the following:

- Limit VOC emissions from dryers, filtration systems, and fugitive emissions from petroleum dry cleaning facilities by extending control requirements to Ellis, Johnson, Kaufman, Parker and Rockwall Counties.

- Decrease in the rule threshold triggering applicability to requirements, such as control and inspection requirements, for controlling flash emissions from fixed roof crude oil and condensate storage tanks.
- Require the application of low solar-absorptance paint to VOC storage tanks.
- Implement enhanced leak detection and repair program measures.
- Decrease the rule threshold triggering applicability to requirements for storage tanks, transport vessels, and marine vessels.
- Extend control VOC emission from degassing of storage tanks or transport vessels in Ellis, Johnson, Kaufman, Parker and Rockwall Counties.
- Regulate pneumatic controllers used in oil and natural gas production, transmission of oil and natural gas, and natural gas processing.
- Extend requirement to install gas collection and control system on municipal solid waste landfills in Ellis, Johnson, Kaufman, Parker and Rockwall Counties.
- Limit VOC emission from each bakery with a bakery over vent gas stream in Collin, Dallas, Denton, and Tarrant Counties with 25 to 50 tons per year of VOC emissions.

The maintenance plan provides that a monitored and certified violation of the NAAQS triggers the requirement to consider, adopt, and implement the plan's contingency measures. The schedule and procedure for adoption and implementation by the State is no longer than 18 months following a monitored and certified violation of the NAAQS. Given the estimated emissions in the DFW nonattainment area, we believe the proposed contingency measures are sufficient to address any potential future violations.

EPA is proposing that the TCEQ's maintenance plan adequately addresses the five basic components of a maintenance plan: Attainment inventory, maintenance demonstration,

monitoring network, verification of continued attainment, and a contingency plan. Thus, the maintenance plan SIP revision proposed by the TCEQ meets the requirements of CAA section 175A and EPA proposes to approve it as a revision to the Texas SIP.

III. Motor Vehicle Emissions Budgets

The DFW maintenance plan submission includes motor vehicle emissions budgets (MVEBs) for the last year of the maintenance plan (in this case 2032). MVEBs are used to conduct regional emissions analyses for transportation conformity purposes. *See* 40 CFR 93.118. The MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. *See* 40 CFR 93.101. As part of the interagency consultation process on setting MVEBs, TCEQ held discussions to determine what years to set MVEBs for the DFW area maintenance plan.

We note the DFW area already has adequate NO_x and VOC MVEBs for the 2008 ozone NAAQS (81 FR 88124, December 7, 2016). Therefore, the DFW area can continue to make conformity determinations for transportation plans, transportation improvement programs, and projects based on budgets for the 2008 ozone NAAQS as it has been doing, according to the requirements of the transportation conformity regulations at 40 CFR Part 93.¹³ The DFW area currently demonstrates conformity to the 2008 and 2015 ozone NAAQS using MVEBs contained in the area's 2008 ozone NAAQS Reasonable Further Progress SIP revision (81 FR 88124). Therefore, EPA is not proposing to approve the submitted 2032 NO_x and VOC MVEBs for transportation conformity purposes. As noted above, EPA is proposing to find that the projected

¹³ *Transportation Conformity Guidance for the South Coast II Court Decision*, EPA-420-B-18-050. November 2018, available on EPA's webpage at <https://www.epa.gov/state-and-local-transportation/policy-and-technical-guidance-state-and-local-transportation>.

emissions inventory which reflects these budgets are consistent with maintenance of the 1-hour and 8-hour standard.

IV. Proposed Action

We are proposing to determine that the DFW area is continuing to attain the 1-hour and 1997 8-hour ozone NAAQS, and that Texas has met the CAA criteria for redesignation of this area. Therefore, the EPA is proposing to terminate all the Serious area classification's anti-backsliding obligations for the DFW area for the 1-hour and 1997 ozone NAAQS. We are also proposing to approve the plan for maintaining the 1-hour and 1997 ozone NAAQS through 2032 in the DFW area.

V. Statutory and Executive Order Reviews

The actions in this proposal terminate statutory and regulatory requirements associated with prior federal revoked ozone standards and do not impose any additional regulatory requirements on sources beyond those imposed by state law. Therefore, this action does not in and of itself create any new requirements. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. For that reason, these actions:

- Are not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Are not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because they are not "significant regulatory actions" under Executive Order 12866;

- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Do not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose

substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone.

40 CFR Part 81

Environmental protection, Air pollution control.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 14, 2019.

David Gray,

Acting Regional Administrator, Region 6.

[FR Doc. 2019-13126 Filed: 6/21/2019 8:45 am; Publication Date: 6/24/2019]